

NOTICE OF PROPOSED RULEMAKING ACTION

The Department of Water Resources (DWR or Department) proposes to adopt as permanent regulations the emergency regulations that establish procedures for public participation in the determination of a revenue requirement and standards for whether the revenue requirement is just and reasonable which became effective June 7, 2002. (California Code of Regulations, Title 23, sections 510-517.) DWR will consider all comments, objections, and recommendations specifically directed at the proposed action or the procedures followed before DWR adopts the proposed rulemaking action.

NOTICE OF A PUBLIC HEARING¹

Notice is hereby given that a public hearing on the proposed rulemaking action will be held:

**April 22, 2003 - 10 AM
Auditorium, First Floor
The Resources Building
1416 Ninth Street
Sacramento, California
(916) 651-9075**

At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. DWR requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to DWR. The written comment period closes at **5:00 p.m. on April 21, 2003**. DWR will consider only comments received at the following address by that time. Submit comments to:

**Elizabeth Leavengood
Department of Water Resources
California Energy Resources Scheduling Division
3310 El Camino Blvd., Sacramento, CA 95821-9001
eleaveng@water.ca.gov**

¹ If you need reasonable accommodations due to disability, please contact the Equal Opportunity Office at (916) 653-6934 or California Relay Services at 1-800-735-2929 (TTY) or 1-800-735-2929 (Voice) and ask them to contact Gloria Bell at (916) 574-1291, gbell@water.ca.gov.

AUTHORITY AND REFERENCE

The authority under which these regulations are adopted is Water Code section 80014. The particular code sections implemented, interpreted, or made specific by these regulations are Water Code sections 80000, 80003, 80100, 80102(b), 80110, 80134, and 80200.

INFORMATIVE DIGEST-POLICY STATEMENT OVERVIEW

To ensure that reliable reasonably priced electric service is available statewide, Division 27 (commencing at Water Code section 80000) authorized the Department to participate in electrical power markets by contracting for the purchase of electrical power and by selling the power to retail end use customers, and with specified exceptions, to local publicly owned electrical utilities at not more than the Department's acquisition costs plus other specified costs. Division 27 also authorized the Department to contract with electrical corporations to transmit and distribute power and provide billing, collection, and other related services as agents of the Department. Water Code section 80012 required the Department to "do those things necessary and authorized under [Water Code sections 80100-80134] to make power available directly or indirectly to electric consumers in California." Water Code section 80110 specifically authorized the Department to contract for the purchase of power "on such terms and for such periods as the department determines and at such prices the Department deems appropriate" taking into account specified considerations.

The electric power purchase program established by Division 27 is funded entirely through the Department's Electric Power Fund revenue requirement.

Obligations authorized by this division shall be payable solely from the Department of Water Resources Electric Power Fund. Neither the full faith and credit nor the taxing power of the state are or may be pledged for any payment under any obligation authorized by this division. [Water Code section 80200, subdivision (d).]

The Department shall be entitled to recover, as a revenue requirement, amounts and at the times necessary to enable it to comply with Water Code Section 80134, . . . Such revenue requirements may also include any advances made to the department hereunder or hereafter for the purposes of this division, or from the Department of Water Resources Electric Power Fund, and General Fund moneys expended by the department pursuant to the Governor's Emergency Proclamation dated January 17, 2001. [Water Code section 80110.]

Division 27 also establishes the mechanism for funding the Department's Electric Power Fund revenue requirement. Water Code section 80134 requires the Department to periodically establish and revise revenue requirements sufficient to provide the following:

(1) The amounts necessary to pay the principal of and premium, if any, and interest on all bonds as and when the same shall become due.

(2) The amounts necessary to pay for power purchased by it and to deliver it to purchasers, including the cost of electric power and transmission, scheduling, and other related expenses incurred by the department, or to make payments under any other contracts, agreements, or obligations entered into by it pursuant hereto, in the amounts and at the times the same shall become due.

(3) Reserves in such amount as may be determined by the department from time to time to be necessary or desirable.

(4) The pooled money investment rate on funds advanced for electric power purchases prior to the receipt of payment for those purchases by the purchasing entity.

(5) Repayment to the General Fund of appropriations made to the fund pursuant hereto or hereafter for purposes of this division, appropriations made to the Department of Water Resources Electric Power Fund, and General Fund moneys expended by the department pursuant to the Governor's Emergency Proclamation dated January 17, 2001.

(6) The administrative costs of the department incurred in administering this division.

The Department must notify the California Public Utilities Commission (Commission) following any determination or revision of a revenue requirement. (Water Code sections 80110 and 80134(b).)

Water Code section 80110 provides:

For purposes of this division and except as otherwise provided in this section, the Public Utility Commission's authority as set forth in Section 451 of the Public Utilities Code shall apply, except any just and reasonable review under Section 451 shall be conducted and determined by the department.

Pursuant to the Rate Agreement approved pursuant to Commission Decision 02-02-051, the Commission is required to impose charges upon retail end use customers for electric power deemed sold to them by the Department. The Rate Agreement also requires the Commission to impose bond charges on customers of Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company until the Department has recovered the portion of the Department's revenue requirements under Water Code section 80134 for bond related costs. The bond charges are based upon the amount of electric power sold to those customers. Any "regulation" (see Government Code section 11342.600) in the Rate Agreement, like any "regulation" used by the Department in periodically determining its revenue

requirements including any procedural regulation for making a just and reasonable determination pursuant to Water Code section 80110, is exempt from the Administrative Procedure Act pursuant to the "rates, prices, or tariffs" exemption in subdivision (g) of Government Code section 11340.9.

However, Water Code section 80014 authorizes the Department to adopt regulations for the purposes of Division 27. Such regulations must construe Division 27 in a manner so as to effectuate its purposes and objectives. (Water Code section 80003(b).)

The regulations in this rulemaking action specify the procedures the Department shall use for public participation in the determination of the Electric Power Fund revenue requirements established and revised by the Department pursuant to Division 27.

COMPARABLE FEDERAL REGULATION OR STATUTE

There are no comparable federal regulations or statutes.

SATISFACTION OF OTHER STATUTORY REQUIREMENTS

The emergency regulations have been approved by the California Water Commission as required by Water Code Section 161.

LOCAL MANDATE DETERMINATION

These regulations do not create a local mandate.

DISCLOSURES/ESTIMATE OF ECONOMIC AND FISCAL IMPACT

These regulations do not impose any cost on a local agency or school district which is required to be reimbursed pursuant to Government Code sections 17500-17630, nor do they impose any other non-discretionary cost or saving on a local agency. These regulations will not result in any cost or savings to any state agency. Any Department of Water Resources costs from determining revenue requirements pursuant to Water Code Section 80134 are attributed directly to the statute. All of these costs are a part of the revenue requirement the department must recover for the Electric Power Fund pursuant to Water Code Section 80134. These regulations will not result in any cost or savings in federal funding to the state.

The Department has made an initial determination and is not aware of any significant effect the proposed action will have on housing costs.

The Department has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The Department has assessed that the proposed action will not create, expand or eliminate California jobs or businesses.

The Department has made an initial determination and is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

The Department has made an initial determination and is not aware of any affect on small businesses. Any Department of Water Resources costs from determining revenue requirements pursuant to Water Code Section 80134 are attributed directly to the statute. All of these costs are a part of the revenue requirement the department must recover for the Electric Power Fund pursuant to Water Code Section 80134.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), DWR must determine that no reasonable alternative which it considered or which has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

DWR invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Elizabeth Leavengood
Department of Water Resources
California Energy Resources Scheduling Division
3310 El Camino Blvd., Sacramento, CA 95821-9001
Telephone: (916) 574-2010
eleaveng@water.ca.gov

The backup contact person for these inquiries is:

Gloria Bell
Department of Water Resources
California Energy Resources Scheduling Division
3310 El Camino Blvd., Sacramento, CA 95821-9001
Telephone: (916) 574-1299
gbell@water.ca.gov

Questions on the substance of the proposed regulations may be directed to Elizabeth Leavengood.

Please direct requests for copies of the proposed text (the "express terms") of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Gloria Bell at the above address.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

DWR will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons and the economic and fiscal impact statement (STD Form 399). Copies may be obtained by contacting Gloria Bell at the address or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, DWR may adopt the proposed regulations substantially as described in this notice. If DWR makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before DWR adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Gloria Bell at the address indicated above. DWR will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Bell at the above address and will be available through the DWR website at www.water.ca.gov.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through the DWR website at www.water.ca.gov.

**Initial Statement of Reasons
Department of Water Resources Revenue Requirement and Just and
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General

In January 2001, Governor Davis determined that the electricity available from the investor-owned utilities (IOUs) was insufficient to prevent widespread and prolonged disruption of electric service in California, proclaimed a state of emergency to exist under California law, and directed the Department of Water Resources (DWR) to enter into contracts and arrangements for the purchase and sale of electric power as necessary to assist in mitigating the effects of the emergency. The Power Supply Program has been implemented under the Governor's proclamation, legislation, and orders of the California Public Utilities Commission (CPUC).

Under the Power Supply Program, DWR sells electricity to approximately 10 million retail end-use customers in California that are also served by the IOUs. DWR purchases power from wholesale suppliers under long-term contracts. Between January 17, 2001 and December 31, 2002, DWR also purchased power from wholesale suppliers in short-term and spot market transactions. DWR electricity is delivered to customers through the transmission and distribution systems of the IOUs and payments from customers are collected by the IOUs pursuant to servicing arrangements approved or ordered by the CPUC.

The Department recovers its costs by making a determination of its "revenue requirements" for a specified period of time and submitting that amount to the CPUC, which in turn allocates that amount among the IOU's service areas for rate collection.

Background and History

In September 1996, State legislation ("AB 1890") became effective which facilitated the deregulation of the California electric energy market. Following the passage of AB 1890, the IOUs sold most of their non-nuclear thermal generation to power producers not regulated by the CPUC. The IOUs were required to rely on purchases through the California Power Exchange (the "PX") and the California Independent System Operator Corporation ("CAISO") to meet the power supply needs not otherwise provided by their retained generation and other sources available to them. However, by the summer of 2000, insufficient power supply was being bid into the PX and CAISO to satisfy all required load at prices within historic ranges. Prices for power procured through the PX began to rise, swiftly and dramatically.

While wholesale prices for electricity increased precipitously during 2000, the retail rates of PG&E and SCE were frozen as part of the industry restructuring created by AB 1890. In the SDG&E service area, where rates had been unfrozen, retail rates escalated sharply, resulting in the California Legislature enacting a statutory cap on retail rates in the San Diego area and delaying the recovery of SDG&E's unrecovered costs. By December 2000,

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PG&E and SCE had incurred several billion dollars of electricity purchase obligations in excess of retail rate revenues received from their customers, adversely affecting the creditworthiness of those IOUs and their ability to pay for power purchases from the PX, the CAISO and other suppliers. Due to PG&E and SCE's defaults on power payments, the PX became insolvent and ceased operations in January 2001.

The credit difficulties experienced by PG&E and SCE also contributed to a shortage of power supply resources bid into the California market, creating an immediate need for a creditworthy party to assume the obligation of purchasing the electricity needed to meet the needs of customers of the IOUs. On January 17, 2001, the Governor declared a state of emergency and authorized DWR to begin purchasing the customers' electric requirements not otherwise met by the IOUs' retained generation and other sources. On January 19, 2001, Senate Bill 7 was passed during the First Extraordinary Session of 2001 and signed into law ("SB 7X"). SB 7X confirmed DWR's responsibilities in the emergency and appropriated \$400 million to DWR for power purchases and administrative costs.

AB 1X

On February 1, 2001, the State Legislature passed AB 1X, which added Division 27, commencing at section 80000, to the Water Code. AB 1X provides a more permanent framework under which DWR purchases the electric requirements of the retail end-use customers not otherwise met by the IOUs and for DWR to recover the costs of the Power Supply Program. Division 27 authorizes DWR to contract for power under such terms and conditions as it deems appropriate, taking into account a number of factors, including a desire to secure as much low-cost power as possible under contract.

Under Division 27, power acquired by DWR is sold directly to retail end-use customers in the service areas of the IOUs, and payment for such power is a direct obligation of the customers to DWR. Division 27 authorizes DWR to contract with the IOU's for the transmission and distribution of its power, and for billing, collection and related services, all as agents of DWR. Division 27 also directs the CPUC, at the request of DWR, to order the IOUs to provide such services. Division 27 authorizes and directs the CPUC to suspend the right of retail end-use customers to purchase their power from energy providers other than the IOU's and DWR, so long as DWR continues to provide power.

Division 27 provides for appropriations from the State's General Fund, on an interim basis pending issuance of bonds, to enable DWR to make such purchases (together with the \$400 million appropriated under SB 7X, the "State Loans"). To provide permanent financing for costs incurred in connection with the Power Supply Program, Division 27 authorizes DWR to issue up to \$13.432 billion in bonds (excluding bond anticipation notes and refunding bonds issued to achieve interest rate savings), subject to the approval of the State Director of

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Finance and the State Treasurer. The Bonds are being issued pursuant to this authorization.

Under Division 27, DWR is entitled to recover its costs, including power purchase costs and debt service on the Bonds (collectively, under Division 27, its "Retail Revenue Requirements"), in the amounts and at the times necessary to satisfy its contractual obligations, and to advise the CPUC of its Retail Revenue Requirements so that they can be recovered in the retail rates imposed upon customers. The Act also authorizes the CPUC and DWR to enter into agreements with respect to charges.

Implementation

In addition to purchasing substantial amounts of power on the spot market and under other short-term contracts, DWR solicited proposals for, negotiated and entered into long-term power contracts. All these costs have been included in the determination of the revenue requirement.

DWR submitted its revenue requirements for the calendar years 2001 and 2002 to the CPUC, made several revisions, and filed the last such revision on November 5, 2001. The CPUC considered DWR's revenue requirements and conducted proceedings to determine the allocation of DWR's costs among the IOU service areas, and on February 21, 2002, issued an order approving specific DWR charges for each of the IOU service areas. DWR submitted its revenue requirements for calendar year 2003 to the CPUC on August 19, 2003. DWR determined its 2003 revenue requirements pursuant to emergency regulations promulgated under AB1X, which are described below. On December 17, 2003, the CPUC issued a decision allocating DWR's revenue requirements for 2003 among the service areas of the IOUs. On February 19, 2004, the CPUC amended its order allocating DWR's 2003 revenue requirements to include additional costs which were previously excluded from the CPUC's December 19, 2003 decision.

DWR and the CPUC also entered into a Rate Agreement, which was adopted by the CPUC on February 21, 2002, CPUC Decision 02-02-051. Under the Rate Agreement, the CPUC is obligated to calculate, revise and impose both: (1) Bond Charges sufficient to provide moneys so that the amounts available for deposit in the Bond Charge Payment Account are at all times sufficient for the payment of all Bond Related Costs; and (2) Power Charges sufficient to provide moneys in the amounts and at the times necessary to pay DWR's operating expenses (including power costs) and all other costs that DWR is entitled to recover under the Act.

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DWR Actions to Establish Retail Revenue Requirements

To enable the CPUC to set Bond Charges and Power Charges, the Rate Agreement requires DWR to submit its revenue requirements to the CPUC. The Rate Agreement defines revenue requirements as the amount of Department costs that are to be generated from power charges imposed by the CPUC from time to time. "Department costs" means all amounts, which DWR is entitled under the Act to recover (other than Bond Related Costs recovered from Bond Charges). The Rate Agreement uses DWR's submittal of its revenue requirements as a vehicle for DWR to notify the CPUC not only about Department Costs, but also about Bond Related Costs.

The Rate Agreement requires DWR, at least annually, and more frequently as deemed reasonably necessary or appropriate by DWR or the CPUC, to review, determine and revise its revenue requirements. The Rate Agreement requires DWR promptly to notify the CPUC following any determination or revision of DWR's revenue requirements. The Rate Agreement also requires DWR to revise and communicate to the CPUC its revenue requirements within 20 days of DWR projecting that within 120 days there will be insufficient funds in certain accounts. DWR is also required by the Rate Agreement to revise and communicate to the CPUC within three business days its revenue requirements in the event of certain other financial circumstances. Prior to including any cost in the revenue requirements communicated to the CPUC, DWR is required by the Rate Agreement to conduct whatever procedures are required by law to determine that such cost is "just and reasonable" within the meaning of Public Utilities Code section 451. Division 27 provides DWR with exclusive authority to conduct procedures to determine the justness and reasonableness of the costs it seeks to recover. The submission of a revenue requirement to the CPUC is the basis for subsequent CPUC orders allocating the revenue requirement among customers.

The Regulations

On June 7, 2002, regulations adopted by DWR to establish procedures for public participation in the determination of a revenue requirement and standards for whether a revenue requirement is "just and reasonable" were approved by the Office of Administrative Law and became effective on an emergency basis. The regulations added Chapter 4 (sections 510 through 517) to Division 2 of Title 23, California Code of Regulations. In this rulemaking action, DWR proposes to adopt the emergency regulations as permanent regulations.

As an essential part of a ratesetting process, the emergency and permanent regulations are expressly exempt from the Administrative Procedure Act pursuant to the "rates, prices, or tariffs" exemption set out at Government Code section 11340.9(g). However, DWR is choosing to adopt them as emergency regulations to provide the public with a meaningful opportunity for

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public participation through the use of familiar Administrative Procedure Act procedures.

Section 510. The purpose of Section 510 is to specify the scope of the regulations. The section is necessary to set out DWR's intent that the regulations apply only to public participation in the determination of a revenue requirement and the standards for whether the revenue requirement is just and reasonable. Pursuant to Division 27, DWR may use such procedures as are reasonably necessary, including quasi-judicial type procedures, in conducting a "just and reasonable" determination pursuant to WC 80110. "Administrators exercising quasi-legislative powers commonly resort to the judicial hearing procedure to uncover, at least in part, the facts necessary to arrive at a sound and fair legislative decision." (20th Century Ins. Co. v. Garamendi 8 Cal.4th 216, 221.)

Section 511. The purpose of section 511 is to set out definitions for terms and phrases used repeatedly in the regulations. This is necessary for the reader to be able to easily understand the meaning of the defined term or phrase as used in the regulations.

Section 512. The purpose of establishing notice content and issuance requirements and notice periods is to provide interested parties a meaningful opportunity to provide input to DWR on the determination of a revenue requirement, on the making of a just and reasonable determination, and on reconsideration of a determination. The content requirements are sufficient to allow interested parties to understand the amount of a revenue requirement and the rationale for a proposed determination and to understand how to provide input on it. The issuance of the notice by mailing, electronic mailing, and posting on DWR's website ensures that interested parties have several means of receiving a notice of an opportunity to provide input on a proposed determination. The time periods allowed for providing input reflect a balancing of a desire to provide a reasonable time for interested parties to develop and submit input and the need to submit revenue requirements to the CPUC to ensure collection of charges from the retail end use customers in a timely manner in the variety of circumstances under which DWR must determine a revenue requirement.

Section 513. The purpose of providing an opportunity to comment on significant additional material relied upon by DWR in making its determination is to ensure that the public has a meaningful opportunity to provide input on all the material DWR relies upon. Providing this opportunity is necessary to ensure that the entire basis for the revenue requirement is subject to public scrutiny except when prohibited by law or contract. The regulation provides for a reasonable period of time for comments instead of setting specific time periods because DWR does not know how much time will be available between the making of a determination and the time when a revenue requirement must be filed with the CPUC.

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Section 514. The purpose of this section is to inform the public that some information relied upon in making a determination may be information that DWR must keep confidential pursuant to contract or law, and to establish conditions under which such material may be made available in order to prepare comments on a determination. These provisions are reasonably necessary because the public should have access to confidential information relied upon by DWR in order to be able to provide meaningful input to DWR if such access is possible under applicable law and contract, and confidentially can be assured.

Section 515. The purpose of this section is to establish conditions for the submission of comments on proposed DWR determinations. The conditions are necessary to ensure that comments are clear and permanently legible, that the object of a comment may be easily identified, that comments are not based upon suspicion, surmises, speculation, feelings, or incredible evidence, and that legal contentions are not frivolous. CPUC has similar requirements for the submission of input. (See, e.g., California Code of Regulations, Title 20, section 2, *et. Seq.*)

Section 516. The purpose of this section is to require a determination on the record, establish a method for making a determination available to interested parties, provide for requests for reconsideration and for comments on revised determinations, and to specify when a determination is final. The provisions are necessary to specify what a determination must be based upon, to provide an opportunity for public input on a final determination, and to specify when a determination is final and no longer subject to comment or reconsideration.

Section 517. The purpose of this section is to interpret and make specific the "just and reasonable" standard of Public Utilities Code section 451 as applied in the context of Division 27. Water Code section 80110 provides in part: "For purposes of this division and except as otherwise provided in this section, the Public Utility Commission's authority as set forth in Section 451 of the Public Utilities Code shall apply, *except any just and reasonable review under Section 451 shall be conducted and determined by the department.*" (Italic added. Water Code section 80110.)

Water Code section 80110 must be construed so as to give effect to the purposes and objectives of Division 27. (Water Code section 80003(b).) A key purpose and objective of Division 27 is to have the retail end use customers fund the entire revenue requirement as determined by DWR. Thus, "any just and reasonable review" conducted by DWR pursuant to WC 80110 must result in the full funding of the entire revenue requirement by the retail end use customers.

Regulation section 517 is necessary because Water Code section 80110 applies the just and reasonable standard of Public Utilities Code section 451 in an unusual context. In its usual context, the just and reasonable standard of Public Utilities Code Section 451 applies to investor owned public utilities, which are in business to make a profit. In this usual context CPUC exercises broad powers

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over public utilities that have not been granted to DWR under Division 27. The following is illustrative of the powers of the CPUC with regard to public utilities subject to its jurisdiction.

In the exercise of its plenary power [pursuant to article XII, section 5 of the California Constitution] the Legislature has provided that all charges by a public utility for commodities or services rendered shall be just and reasonable (§ 451) and has given the commission the power and obligation to determine not only that any rate or increase in a rate is just and reasonable (§§ 454, 728), but also authority to "supervise and regulate every public utility in the State and [to] do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction." (§ 701.) In regulating a public utility the commission may determine the facilities, service, and method of service in order to ensure that the service provided is adequate (§ 761), and in aid thereof may order that the utility extend or improve its physical facilities or properties. (§ 762.) [Para.] Further, a public utility may not dispose of any property necessary and useful in the performance of its duties without authorization by the commission. (§ 851.) [Citations are to the Public Utility Code. *Camp Meeker Water System, Inc. v. Public Utilities Com.* (1990) 51 Cal.3d 845, 862-863.]

The purpose of section 451 in this usual context is to set out obligations of public utilities to comply with the implied consent that their monopolistic authority will be utilized for the good of the public need. Those obligations are generally for the benefit of users and competitors and possibly employees and may be enforced privately provided such enforcement does not encroach or hamper CPUC supervision or regulation. (See, *Barnett v. Delta Lines, Inc.* (1982) 137 Cal.App.3d 674, 683.)

Section 451 in its usual context is also applied by the CPUC in ratemaking for public utilities subject to its jurisdiction. (See, e.g., *City of Los Angeles v. Public Utilities Com.* (1975) 15 Cal.3d 680, 685.) The setting of "just and reasonable" rates for utilities by the CPUC reflects a balancing of ratepayer and investor interests. (See, e.g., *Re San Jose Water Company*, 14 CPUC 2d 322 (1984).) CPUC ratemaking, CPUC's treatment of costs and expenses allowed as "just and reasonable" or disallowed as "unjust" or "unreasonable" ratebase is relevant to whether the a rate is confiscatory.

. . . [I]n determining whether the rate fixed is confiscatory the court does consider the commission's treatment of items allowed or disallowed in rate base or expenses. (See *Dyke Water Co. v. Public Utilities Com.*, *supra*, 56 Cal.2d 105; *American Toll Bridge Co. v. Railroad Com.*, *supra*, 12 Cal.2d

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184, 203- 206.)" [*Pacific Tel. & Tel. Co. v. Public Utilities Commission*
(1965) 62 Cal.2d 634, 659.]

In making case-by-case decisions in its review of public utility actions the CPUC has evolved certain general principles to oversee the business decisions made by public utilities, as illustrated by the following excerpt from one of CPUC's decisions.

The starting point of the review of . . . decisions by the utility has been the same. Namely, the event or contract is to be reviewed based on facts that are known or should have been known by the utility management at the time. This standard is used to avoid the application of hindsight in reviewing the reasonableness of a utility decision.

In a recent decision considering the reasonableness of a proposed amendment of a standard offer agreement, we noted our obligation to protect ratepayer interests in determining reasonableness. Specifically, we concluded:

Utilities are held to a standard of reasonableness based upon the facts that are known or should be known at the time. While this reasonableness standard can be clarified through the adoption of guidelines, the utilities should be aware that guidelines are only advisory in nature and do not relieve the utility of its burden to show that its actions were reasonable in light of circumstances existent at the time. Whatever guidelines are in place, the utility always will be required to demonstrate that its actions are reasonable through clear and convincing evidence. (D.88-03-036, at p. 5.)

. . . .

Our decisions reviewing the reasonableness of utility actions have also provided certain guidelines which can be applied to utility decisions Among them, the Commission has found:

1. The act of the utility should comport with what a reasonable manager of sufficient education, training, experience and skills using the tools and knowledge at his disposal would do when faced with a need to make a decision and act;
2. The Commission, as the agency charged with oversight and economic regulation of the monopoly utilities, has a legitimate concern not only with the outcomes of the utilities' decisions, but also the process employed to arrive at a particular decision;

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3. The reasonable and prudent act is not limited to the optimum act, but includes a spectrum of possible acts consistent with the utility system need, the interests of the ratepayers, and the requirements of governmental agencies of competent jurisdiction;
4. The action taken should logically be expected, at the time the decision is made, to accomplish the desired result at the lowest reasonable cost consistent with good utility practices.
5. The greater the level of money, risk and uncertainty involved in a decision, the greater the care the utility must take in reaching that decision;
6. The burden rests heavily upon a utility to prove with clear and convincing evidence, that it is entitled to the requested rate relief and not upon the Commission, its staff, or any interested party to prove the contrary. (D.83-05-036, 11 CPUC 2d 474, 475 (1983); D.86-10-069, at pp. 31-32; D.87-06-021, at pp. 19-20; D.87-12-071, at p.32; and D.89-02-074, at pp.8-9.) [D.90-09-088, 37 CPUC 2d 488, 499.]

In contrast, DWR, in carrying out its statutory responsibilities to buy and sell power, to determine its revenue requirements, and to make any just and reasonable determination, is in a position substantially different from the usual positions of both the CPUC and the public utilities it regulates and supervises. Unlike a public utility, DWR is not in business to make a profit for invested capital. Unlike CPUC, DWR does not have ratemaking and other powers to supervise and regulate public utilities. Instead, DWR is a state agency which has a duty to buy and sell power pursuant to the authorization and policy considerations specified by the Legislature in Division 27. DWR has a duty to determine its revenue requirement to fully fund the Power Purchase Program under Division 27, and has a duty to determine that its revenue requirement is just and reasonable to protect ratepayer interests in a manner that effectuates the purposes and objectives of Division 27. If CPUC determines that a cost or expense is not just and reasonable, in the non-Division 27 context, any charge for an unjust or unreasonable is unlawful and the utility will have to cover the cost of the expenditure from sources other than the ratepayer (probably out of investor profits). In sharp contrast, under Division 27 the *only* source for payment of DWR's revenue requirement is the retail end use customer. DWR has no authority under Division 27 to shift the burden of a cost or expenditure authorized under Division 27 to any other source. CPUC requires a public utility which is requesting rate relief to demonstrate that the requested rate changes are demonstrated by clear and convincing evidence. This is understandable because the public utility seeks a change in the status quo, a change from that which has already been determined to be just and reasonable. In contrast, DWR as an official duty under Division 27 to buy and sell power and to determine a

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revenue requirement that is sufficient. It is notable that with regard to the burden of proof in the judicial context, Evidence Code section 664 establishes a presumption that official duties have been regularly performed.

The provision in regulation section 517 which requires that the record must demonstrate by substantial evidence that the revenue requirement is just and reasonable is necessary to ensure that the record contain an explanation of the basis of a revenue requirement, including all material relied upon and an explanation of assumptions and methodologies, and contain a demonstration that DWR has considered all relevant factors, and has demonstrated a rational connection between those factors, the policy choices made, and the purposes of Division 27. The requirements also ensure that there will be an adequate record for public and judicial review. Requiring that the demonstration must consider circumstances existing or projecting to exist at the respective times of DWR's decisions concerning whether to incur costs comprising a revenue requirement is necessary to prevent the application of hindsight to decisions that were in fact based on circumstances existing or projected to exist at the time of the decisions were made.

The purpose of identifying the factors specified in section 517(a)(1)-(6) is to ensure that the making of the determination is consistent with the purposes, objectives, and provisions of Division 27.

Material Relied Upon.

In proposing these regulations, DWR relies upon the Rate Agreement between the DWR and the CPUC as approved pursuant to Decision 02-02-051 of the CPUC.

Reasonable Alternatives.

DWR considered the use of ad hoc procedures for the determination of each revenue requirement and for each just and reasonable determination, but decided that the establishment of procedures of general application would improve the opportunity for meaningful public participation in such determinations. DWR also considered not adopting a regulation to implement, interpret, or make specific the "just and reasonable" standard of Public Utilities Code section 451 as applied in the context of Division 27 of the Water Code, but decided that the public would be better served by adopting such a regulation.

Initial Statement of Reasons
Department of Water Resources Revenue Requirement and Just and
Reasonable Determination Regulations

Significant Statewide Adverse Economic Impact
Directly Affecting Business.

These regulations do not have a significant, statewide adverse impact directly affecting business because they do not require business to do anything or to abstain from doing anything. Rather, the regulations establish a procedure that may be used by businesses to provide input on the determination of revenue requirements and on just and reasonable determinations. The regulations may actually benefit businesses who are purchasers of power under DWR's Power Purchase Program by ensuring that the charges paid by the retail end use customers are just and reasonable.

Adverse Impact on Small Business.

These regulations do not have an adverse impact on small business because they do not require business to do anything or to abstain from doing anything. Rather, the regulations establish a procedure that may be used by businesses to provide input on the determination of revenue requirements and on just and reasonable determinations. The regulations may benefit small businesses who are purchasers of power under DWR's Power Purchase Program by ensuring that they have input into the determination as to whether charges paid by the retail end use customers are just and reasonable.

Unnecessary Duplication or Conflict with Federal Regulations.

There are no federal regulations contained in the Code of Federal Regulations addressing the same issues addressed by these regulations.

Title 23.

Division 2. Department of Water Resources

Chapter 4. Revenue Requirement and Just and Reasonable Determination

§510. Applicability.

This chapter establishes procedures for public participation in the determination of a revenue requirement and standards for whether the revenue requirement is just and reasonable. The regulations in this chapter are not intended to implement, interpret, or make specific any other duties or responsibilities of the department under the Act.

Authority cited: Section 80014, Water Code. Reference: Sections 80003, 80004, 80100, 80102, 80110, 80134 and 80200(d), Water Code.

§511. Definitions.

(a) "Act" means Chapter 4 of the First Extraordinary Session of 2001 of the California Legislature (commonly known as "AB1X"), as amended by Chapter 9 of the First Extraordinary Session of 2001 of the California Legislature, and as codified in part as Division 27 of the California Water Code.

(b) "Comment" means any written communication to the department regarding a proposed determination, including additional material proposed for consideration by the department, submitted in accordance with this chapter, and excluding information received at a workshop, if one is held.

(c) "Commission" means the California Public Utilities Commission.

(d) "Department" means the State of California Department of Water Resources, acting under the authority and powers granted by the Act, and not under its powers and responsibilities with respect to the State Water Resources Development System or with respect to any other program it administers.

(e) "Determination" means a determination by the department of a revenue requirement of a certain amount that, together with any moneys on deposit in the Electric Power Fund, is sufficient to provide the amounts necessary to pay obligations authorized by the Act, and that such revenue requirement is just and reasonable.

(f) "Electric Power Fund" means the Department of Water Resources Electric Power Fund established by Water Code section 80200.

(g) "Mailed" means deposited with the United States Postal Service with postage prepaid. If agreed to by the recipient, the mailing of any notice under this chapter may be accomplished by electronic-mail.

(h) "Material" means data and other factual information, technical, theoretical, and empirical studies or reports.

(i) "Notice" means a notice of opportunity to submit comments, unless otherwise specified.

(j) "Proposed determination" means a department proposal to issue a determination, presented for public comment as described in this chapter.

(k) "Rate Agreement" means the rate agreement between the department and the commission approved pursuant to Decision 02-02-051 of the commission.

(l) "Record" means, with respect to any given determination, the notices issued under this chapter with respect to the determination, written comments submitted in response to the notices, material relied on by the department, the proposed determination, requests for reconsideration, and the determination. "Record" does not include information submitted in any form at a workshop, if one is held.

(m) "Revenue requirement" means an amount, or a revision to the amount, to be established by the department, and of which the department is to notify the commission, in compliance with Water Code sections 80110 and 80134. Each revenue requirement shall relate to the period of time specified in the determination.

Authority cited: Section 80014, Water Code. Reference: Sections 80004, 80110, 80134 and 80200(d), Water Code.

§512. Notice of Opportunity to Submit Comments.

(a) The department shall provide to interested parties an opportunity to submit comments on each proposed determination made by the department as provided in this chapter.

(b) At least 21 calendar days prior to the close of the opportunity to submit comments on a proposed determination, or upon such shorter or longer time period as the department deems reasonably necessary under the circumstances, a notice shall be:

(1) mailed to every person who has filed a request for notice,

(2) electronically mailed to every person who requests to be notified by electronic e-mail, and

(3) posted on the department's website.

(c) For the purposes of subsection (b), seven calendar days prior to the close of the opportunity to submit comments shall be deemed to be the time period necessary under the circumstances with respect to any revenue requirement required to be filed with the commission pursuant to the second sentence of section 4.1(b) of the Rate Agreement. For the purposes of subsection (b), one business day prior to the close of such opportunity shall be deemed to be the time period necessary under the circumstances with respect to any revenue requirement required to be filed with the commission pursuant to the last sentence of section 4.1(b) of the Rate Agreement.

(d) If, after any notice, the department subsequently provides additional time to submit comments, the department shall provide notice of the additional time by posting a notice on its website, mailing a notice to every person who has filed a request for notice, and electronically mailing a notice to every person who has requested to be notified by electronic mail.

(e) A notice under this section shall include the following:

(1) The mailing and electronic-mail address at which comments must be received, and the deadline for receipt of comments.

(2) A statement explaining where a copy of the proposed determination is available for review. The proposed determination shall include the amount of the proposed revenue requirement, a written explanation of the assumptions and methodologies underlying the proposed determination, a written explanation of how the department reached the proposed determination, and reference to the material relied upon by the department to support the proposed determination.

(3) A statement explaining the process under section 514 for disclosure of certain proprietary or confidential information.

(4) The time and place of a workshop on the revenue requirement if the department, at its discretion, decides to hold a workshop.

(5) The amount of time to be allowed, after the date of electronic publication of the determination, for requests for reconsideration. A reasonable time period shall be allowed, taking into consideration the time constraints for submitting a determination to the commission.

(f) If a notice is given substantially in the manner described in this section, a deficiency in its content or delivery shall not be a basis for invalidating a determination.

Authority cited: Section 80014, Water Code. Reference: Sections 80110, 80134 and 80200(d), Water Code.

§513. Notice of Significant Additional Material Relied Upon.

(a) If following a notice pursuant to section 512 the department identifies significant material that it intends to rely upon in making its determination, but which was not identified in the

proposed determination, the department shall provide notice of such additional material to those persons who received the original notice by the same means as the original notice. The notice will also explain how the material will be made available for review.

(b) A notice of significant additional material shall set a reasonable period of time for receipt of comments on that additional material and state the mailing and electronic-mail addresses at which the comments must be received.

Authority cited: Section 80014, Water Code. Reference: Sections 80110, 80134 and 80200(d), Water Code.

§514. Confidential Information.

The department shall not disclose any proprietary information or other information in the record that the department must keep confidential pursuant to contract or law, but, if such contract or law permits, the department shall make such information available upon receipt, from the person requesting disclosure, of (a) a valid and binding nondisclosure agreement in a form that the department has determined meets the requirements of the applicable contractual or legal confidentiality requirements, and (b) a showing that the disclosure is necessary in order to prepare comments on a determination.

Authority cited: Section 80014, Water Code. Reference: Sections 80004, 80110, 80134 and 80200(d), Water Code.

§515. Comments.

(a) Comments must be in typewritten form and may be submitted by electronic-mail, U.S. mail, or hand delivery, subject to the requirements set forth in this section. All copies must be clear and permanently legible.

(b) Comments must identify the determination that is the subject of the comment by referencing the deadline stated in the notice under section 512 or section 513.

(c) Comments submitted to the department must be signed. Comments submitted on behalf of a business or organization must be signed by a person authorized to comment, and must include the name and title of the signatory, the date of signing, the signatory's business address, and the signatory's business telephone number. Signatures for comments submitted by electronic-mail shall be delivered to the department pursuant to section 515(f).

(d) A signature on submitted comments certifies that the signatory has read the comment and knows its contents; that to the signatory's best knowledge, information, and belief, formed after diligent inquiry, the facts are true as stated; that any legal contentions are warranted by existing law or by a good faith argument for the extension, modification, or reversal of existing law; that the comments are not tendered for any improper purpose; and that the signatory has full power and authority to sign the document.

(e) No documents or records submitted as comments which purport to be statements of fact shall be considered by the department, unless the documents or records have been certified to the best of knowledge by the person preparing or in charge of preparing them as being true and correct.

(f) Comments submitted through electronic-mail shall be considered by the department only if an original, signed copy of the comment is also received within three working days after the comment is received electronically.

Authority cited: Section 80014, Water Code. Reference: Sections 80110, 80134 and 80200(d), Water Code

§516. Determination on the Record.

(a) After considering comments timely received in response to a notice and otherwise in conformance with the requirements of this chapter, the department shall issue a determination on the record. Upon issuance, the department shall post a copy of a determination on its website and mail or electronically mail a notice of posting to all persons requesting such notification, to all persons who submitted comments on the proposed determination, and to all persons who submitted requests for reconsideration.

(b) Requests for reconsideration shall be considered by the department if submitted within the time set forth in the notice issued pursuant to section 512.

(c) If the department proposes to revise a determination or a revised determination, before or after it is submitted to the commission but prior to the time that a commission order implementing the determination is adopted, the department shall give notice of the proposed revision in the manner specified in section 513. The department shall consider comments received in response to the notice of proposed revision and specifically directed at the proposed revision. The department shall issue a revised determination on the record in the manner specified in section 516(a). A determination revised in accordance with this section, 516(c), shall not be subject to requests for reconsideration.

(d) Each determination, including any revised determination, shall be effective upon issuance pursuant to section 515(a), including for the purpose of submission to the commission at such time as may be determined by the department, notwithstanding any subsequent reconsideration or proposed revision.

Authority cited: Section 80014, Water Code. Reference: Sections 80110, 80134 and 80200(d), Water Code.

§517. Standards.

(a) To protect ratepayer interests, the record of the determination must demonstrate by substantial evidence that the revenue requirement is just and reasonable, considering the circumstances existing or projected to exist at the respective times of the department's decisions concerning whether to incur the costs comprising such revenue requirement, and the factors which under the Act are relevant to such determination and such decisions, including but not limited to the following:

(1) The development and operation of the program as provided in the Act is in all respects for the welfare and the benefit of the people of the state, to protect the public peace, health, and safety, and constitutes an essential governmental purpose;

(2) The department must do those things necessary and authorized under chapter 2 of the Act to make power available directly or indirectly to electric consumers in California; provided that except as otherwise stated, nothing in the Act authorizes the department to take ownership of the transmission, generation, or distribution assets of any electrical corporation in the State of California;

(3) Upon those terms, limitations, and conditions as it prescribes, the department may contract with any person, local publicly owned electric utility, or other entity for the purchase of power on such terms and for such periods as the department determines and at such prices the department deems appropriate taking into account all of the factors listed in section 80100 of the Water Code;

(4) The department may sell any power acquired by the department pursuant to the Act to retail end use customers, and to local publicly owned electric utilities, at not more than the department's acquisition costs, including transmission, scheduling, and other related costs, plus other costs as provided in section 80200 of the Water Code;

(5) The department must, at least annually, and more frequently as required, establish and revise revenue requirements sufficient, together with any moneys on deposit in the Electric Power Fund, to provide for all of the amounts listed in section 80134(a) of the Water Code, including but not limited to the repayment to the General Fund of appropriations made to the Electric Power Fund for purposes of the Act; and

(6) Obligations of the department authorized by the Act shall be payable solely from the Electric Power Fund.

Authority cited: Section 80014, Water Code. Reference: Section 80000, 80003, 80100, 80102(b), 80116, 80134 and 80200, Water Code.

ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)

STD. 399 (Rev. 2-85)

See SAM Sections 6600 - 6680 for Instructions and Code Citations

DEPARTMENT NAME Department of Water Resources	CONTACT PERSON Gloria Bell	TELEPHONE NUMBER (916) 574-1291
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Revenue Requirement and Just and Reasonable Determination		NOTICE FILE NUMBER Z

ECONOMIC IMPACT STATEMENT

A. ESTIMATED PRIVATE SECTOR COST IMPACTS (Include calculations and assumptions in the rulemaking record.)

1. Check the appropriate box(es) below to indicate whether this regulation:

- | | |
|-----------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> a. Impacts businesses and/or employees | <input type="checkbox"/> e. Imposes reporting requirements |
| <input type="checkbox"/> b. Impacts small businesses | <input type="checkbox"/> f. Imposes prescriptive instead of performance standards |
| <input type="checkbox"/> c. Impacts jobs or occupations | <input type="checkbox"/> g. Impacts individuals |
| <input type="checkbox"/> d. Impacts California competitiveness | <input type="checkbox"/> h. None of the above (Explain below. Complete the Fiscal Impact Statement as appropriate.) |

h. (cont.) _____

(If any box in Items 1 a through g is checked, complete this Economic Impact Statement.)

2. Enter the total number of businesses impacted: _____ Describe the types of businesses (Include nonprofits): _____

Enter the number or percentage of total businesses impacted that are small businesses: _____

3. Enter the number of businesses that will be created: _____ eliminated: _____
Explain: _____4. Indicate the geographic extent of impacts: ☐ Statewide ☐ Local or regional (list areas): _____

5. Enter the number of jobs created: _____ or eliminated: _____ Describe the types of jobs or occupations impacted: _____

6. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?

☐ Yes☐ No

If yes, explain briefly: _____

B. ESTIMATED COSTS (Include calculations and assumptions in the rulemaking record.)

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ _____

a. Initial costs for a small business: \$ _____ Annual ongoing costs: \$ _____ Years: _____

b. Initial costs for a typical business: \$ _____ Annual ongoing costs: \$ _____ Years: _____

c. Initial costs for an individual: \$ _____ Annual ongoing costs: \$ _____ Years: _____

d. Describe other economic costs that may occur: _____

ECONOMIC AND FISCAL IMPACT STATEMENT *cont. (STD. 399, Rev. 2-98)*

2. If multiple industries are impacted, enter the share of total costs for each industry: _____

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. *(Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.):* \$ _____

4. Will this regulation directly impact housing costs? ☐ Yes ☐ No If yes, enter the annual dollar cost per housing unit: \$ _____ and the number of units: _____

5. Are there comparable Federal regulations? ☐ Yes ☐ No Explain the need for State regulation given the existence or absence of Federal regulations: _____

Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ _____

C. ESTIMATED BENEFITS *(Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)*

1. Briefly summarize the benefits that may result from this regulation and who will benefit: _____

2. Are the benefits the result of: ☐ specific statutory requirements, or ☐ goals developed by the agency based on broad statutory authority?
Explain: _____

3. What are the total statewide benefits from this regulation over its lifetime? \$ _____

D. ALTERNATIVES TO THE REGULATION *(Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)*

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: _____

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation:	Benefit: \$ _____	Cost: \$ _____
Alternative 1:	Benefit: \$ _____	Cost: \$ _____
Alternative 2:	Benefit: \$ _____	Cost: \$ _____

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: _____

4. Rulemaking law requires agencies to consider performance standards as an alternative. If a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? ☐ Yes ☐ No

Explain: _____

E. MAJOR REGULATIONS *(Include calculations and assumptions in the rulemaking record.)*

Cal/EPA boards, offices and departments are subject to the following additional requirements per Health and Safety Code section 57005.

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 2-98)

1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million? ☐ Yes ☐ No (If No, skip the rest of this section)

2. Briefly describe each equally as effective alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: _____

Alternative 2: _____

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation: \$ _____ Cost-effectiveness ratio: _____

Alternative 1: \$ _____ Cost-effectiveness ratio: _____

Alternative 2: \$ _____ Cost-effectiveness ratio: _____

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT (Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years)

☐ 1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:

☐ a. is provided in (Item _____, Budget Act of _____) or (Chapter _____, Statutes of _____)

☐ b. will be requested in the _____ Governor's Budget for appropriation in Budget Act of _____
(FISCAL YEAR)

☐ 2. Additional expenditures of approximately \$ _____ in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:

☐ a. implements the Federal mandate contained in _____

☐ b. implements the court mandate set forth by the _____
court in the case of _____ vs. _____

☐ c. implements a mandate of the people of this State expressed in their approval of Proposition No. _____ at the _____
election; (DATE)

☐ d. is issued only in response to a specific request from the _____
_____, which is/are the only local entity(s) affected;

☐ e. will be fully financed from the _____ authorized by Section _____
(FEES, REVENUE, ETC.)
_____ of the _____ Code;

☐ f. provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each such unit.

☐ 3. Savings of approximately \$ _____ annually.

☐ 4. No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current law and regulations.

ECONOMIC AND FISCAL IMPACT STATEMENT *cont.* (STD. 399, Rev. 2-98)

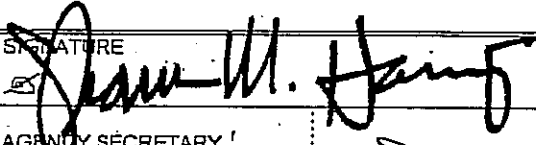


- ☒ 5. No fiscal impact exists because this regulation does not affect any local entity or program.
- ☐ 6. Other.

B. FISCAL EFFECT ON STATE GOVERNMENT *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

- ☐ 1. Additional expenditures of approximately \$_____ in the current State Fiscal Year. It is anticipated that State agencies will:
- ☐ a. be able to absorb these additional costs within their existing budgets and resources.
- ☐ b. request an increase in the currently authorized budget level for the _____ fiscal year.
- ☐ 2. Savings of approximately \$_____ in the current State Fiscal Year.
- ☐ 3. No fiscal impact exists because this regulation does not affect any State agency or program.
- ☒ 4. Other. (See * below.)

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

- ☐ 1. Additional expenditures of approximately \$_____ in the current State Fiscal Year.
- ☐ 2. Savings of approximately \$_____ in the current State Fiscal Year.
- ☒ 3. No fiscal impact exists because this regulation does not affect any federally funded State agency or program.
- ☐ 4. Other.

SIGNATURE		TITLE
		
AGENCY SECRETARY ¹		DATE
APPROVAL/CONCURRENCE		5/28/02
DEPARTMENT OF FINANCE ²	PROGRAM BUDGET MANAGER	DATE
APPROVAL/CONCURRENCE		

- The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6600-6680, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.
- Finance approval and signature is required when SAM sections 6600-6670 require completion of the Fiscal Impact Statement in the STD. 399.

* Any Department of Water Resources costs from conducting the just and reasonable determination pursuant to Water Code Section 80110 are attributable directly to the statute. All of these costs are a part of the revenue requirement the department must recover pursuant to Water Code Section 80134.

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 4-99)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-03 0225-10		
For use by Office of Administrative Law (OAL) only			
RECEIVED FOR FILING		PUBLICATION DATE	
FEB 25 '03		MAR -7 '03	
Office of Administrative Law			
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY Department of Water Resources			AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE Revenue Requirement & Just & Rsbl. Procedures		TITLE(S) 23	FIRST SECTION AFFECTED 510	2. REQUESTED PUBLICATION DATE 3/07/03
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON Gloria Bell		TELEPHONE NUMBER (916) 574-1291	FAX NUMBER (Optional) (916) 574-2512
OAL USE ONLY	ACTION ON PROPOSED NOTICE		NOTICE REGISTER NUMBER	PUBLICATION DATE
	<input type="checkbox"/> Approved <input type="checkbox"/> Disapproved <input type="checkbox"/> Withdrawn <input type="checkbox"/> Submitted <input type="checkbox"/> Embodied			

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S)		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics-related)			
SECTION(S) AFFECTED (List all section number(s) individually)	ADOPT		
	AMEND		
TITLE(S)	REPEAL		
3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code, § 11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code, §§ 11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, § 11346.1(b)) <input type="checkbox"/> Emergency Readopt (Gov. Code, § 11346.1(h)) <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, § 11346.1)			
<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Government Code §§ 11346.2 - 11346.9 prior to, or within 120 days of, the effective date of the regulations listed above.			
<input type="checkbox"/> Print Only <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, § 100) <input type="checkbox"/> Other (specify) _____			
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs., title 1, §§ 44 and 45)			
5. EFFECTIVE DATE OF REGULATORY CHANGES (Gov. Code, §§ 11343.4, 11346.1(d))			
<input type="checkbox"/> Effective 30th day after filing with Secretary of State <input type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> Effective other (Specify) _____			
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal			
<input type="checkbox"/> Other (Specify) _____			
7. CONTACT PERSON		TELEPHONE NUMBER ()	FAX NUMBER (Optional) ()
		E-MAIL ADDRESS (Optional)	

8.

I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE

TYPED NAME AND TITLE OF SIGNATORY

Thomas M. Hannigan, Director